

limited to, 42 U.S.C. § 1988, that are in any way or manner related or collateral to the property that is the subject of this litigation;

c. that neither the Settlement Agreement, the Mutual General Release, both dated February 19, 2003, the payment of consideration by the County, the "Findings of Fact, Conclusions of Law, and Order," entered by this Court on July 17, 2001, nor the order requested pursuant to this motion, shall be considered relief on the merits, a remedial action, or a change in position by the County to satisfy the demands of Plaintiffs for purposes of any state or federal law, including but not limited to, 42 U.S.C. § 1988.

d. that neither Plaintiffs nor the County is to be construed as a "prevailing party" in this case, under any state or federal law, including but not limited to, 42 U.S.C. § 1988, by the Settlement Agreement or Mutual General Release, both dated February 19, 2003, the payment of consideration by the County, the "Findings of Fact, Conclusions of Law, and Order," entered by this Court on July 17, 2001, or the order requested pursuant to this motion; and

e. that payments made by the County to Plaintiffs pursuant to the terms of the Settlement Agreement shall be by wire transfer as described therein.

The Settlement Agreement, which was approved by Plaintiffs and the Monroe County Board of County Commissioners on February 19, 2003, is attached hereto as Exhibit "A." Pursuant to the Settlement Agreement and in accordance with Rule 1.730(c), Florida Rules of Civil Procedure, the Parties respectfully request this Court to: (1) dismiss this case with prejudice with each Party to bear its own attorney's fees, expenses, and court costs (including but not limited to any fees, expenses, and/or costs under 42 U.S.C. § 1983 and/or 42 U.S.C. § 1988); (2) void, set aside, and vacate the Court's Order of July 17, 2001; and (3) retain jurisdiction for

the sole purpose of enforcing the terms of the Settlement Agreement, including scheduled payments as set forth therein.

Respectfully submitted this \_\_\_\_ day of February, 2003.

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By: \_\_\_\_\_

**MUTUAL GENERAL RELEASE**

The undersigned Parties hereto, **Katherine F. Shadck**, individually, on behalf of and as the Personal Representative of **Arthur J. Shadck**, or in any capacity whatsoever, and **Joseph R. Harrison, III**, individually and as Trustee of the Testamentary Trusts of **Joseph R. Harrison, Jr.**, or in any capacity whatsoever, for themselves, their predecessors, successors, respective heirs, executors, administrators, legatees, assigns, directors, officers, agents, employees, and all natural persons, corporations, firms, organizations, partnerships, associations, and entities claiming by or through them, ("**Shadck/Harrison**") and **Monroe County** and the **Monroe County Board of County Commissioners**, for themselves, their elected and appointed officials, predecessors, successors, directors, officers, agents, employees, and all natural persons, corporations, firms, boards, departments, commissions, councils, committees, and entities claiming by or through them (the "**County**"), for and in consideration of the payment of Five Million Nine Hundred Thousand Dollars (\$5,900,000.00) by the County to **Shadck/Harrison**, in the manner and within the times set forth in the Settlement Agreement dated the 19th day of February, 2003, and the exchange of other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by each Party, hereby mutually

**FOREVER RELEASE, REMISE, AND DISCHARGE**

one another of and from any and all claims, liability, actions, causes of action, suits, appeals, debts, contracts, controversies, compensations, demands, proceedings, counts, dues, accountings, reckonings, damages, interest (including prejudgment and post-judgment interest), attorney's fees, expenses (including, but not limited to, investigative and expert expenses), costs, judgments, and orders, in law or in equity, (specifically including, but not limited to, any and all attorney's fees, expenses, costs, and claims brought under state or federal law, including, but not

limited to, 42 U.S.C. § 1983 and/or 42 U.S.C. § 1988) of every and any kind or nature which the County and Shadek/Harrison had, have, or may have, whether known or unknown, against each other as of February 19, 2003 including, but not limited to, any claims, liability, actions, causes of action, suits, appeals, debts, contracts, controversies, compensations, demands, proceedings, counts, dues, accountings, reckonings, damages, interest (including prejudgment and post-judgment interest), attorney's fees, expenses (including, but not limited to, investigative and expert expenses), costs, judgments, and orders, in law or in equity, (specifically including, but not limited to, any and all attorney's fees, expenses, costs, and claims brought under state or federal law, including, but not limited to, 42 U.S.C. § 1983 and/or 42 U.S.C. § 1988) of every and any kind or nature, arising out of, or in any manner relating or collateral to, any of the claims that were raised or could have been raised in the litigation in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida, styled *Katherine F. Shadek and Joseph R. Harrison, III, et al. v. the Monroe County Board of County Commissioners*, Case No. 95-20398-CA-05; the litigation in the United States District Court for the Southern District of Florida, styled *Arthur J. Shadek; Katherine F. Shadek; and Joseph R. Harrison, III, as Personal Representative of Joseph R. Harrison, Jr., v. Monroe County Board of County Commissioners*; Case No. 92-10026-Civ-King; and the appeal in the United States Court of Appeals for the Eleventh Circuit, styled *Arthur J. Shadek; Katherine F. Shadek; and Joseph R. Harrison, III, as Personal Representative of Joseph R. Harrison, Jr., v. Monroe County Board of County Commissioners*; Case No. 95-4947; or in any way related or collateral to the purchase, ownership, use, regulation, or disposition of the real property commonly described as "Ocean Forest," more particularly described in Exhibit "A" attached hereto and incorporated by this reference.

Shadek/Harrison and the County (the "Parties") further understand that this Mutual General Release is made and accepted in full compromise, settlement, accord and satisfaction of any and all manner of actions, causes of action, suits, proceedings, claims, costs, expenses, counts, debts, dues, accountings, reckonings, liability and demands of every kind and nature whether known or unknown, including all consequences thereof which may hereafter develop, whether anticipated or not, as well as those already developed or now apparent, which the Parties have or could or might have against each other as of February 19, 2003, including, but not limited to, those in any way growing out of, or connected with, or which may hereafter in any way grow out of or be connected with the purchase, ownership, use, regulation, or disposition of the real property commonly described as "Ocean Forest," more particularly described in "Exhibit A" attached hereto and incorporated herein by this reference.

The Parties hereby expressly release each other from any and all claims for costs, expenses, or attorney's fees, whether under state or federal law.

In executing this Mutual General Release the Parties understand that the terms hereof are contractual and not a mere recital, and warrant that no promise or agreement not herein expressed has been made, that this Mutual General Release is not executed in reliance upon any statement or representation made by the Party or Parties hereby released or said Parties' attorneys, agents, employees, or representatives.

Shadek/Harrison warrant that they have not sold, transferred, or assigned any claim, action, cause of action, debt, expense, contract, controversy, agreement, promise, damages, interest, attorney's fees, investigative expenses, costs, judgments, and orders, in law or in equity, which Shadek/Harrison had, have, or may have, against the County arising out of, or in any manner relating to the subjects of this Mutual General Release.

This Mutual General Release shall not operate as a release of any duty or obligation incurred or to be incurred by either Party under the terms and conditions of the Settlement Agreement between them dated February 19, 2003.

Without in any way limiting the foregoing, it is agreed and understood that this Mutual General Release shall be and is binding upon and inure to the benefit of the Parties, including their heirs, executors, administrators, personal representatives, predecessors, successors, legatees, assigns and the Parties' directors, officers, agents, employees, elected and appointed officials, and representatives.

It is further agreed and understood by the Parties that the aforesaid consideration, previously acknowledged, is the sole consideration for this Mutual General Release and said payment is for the sole purpose of settling any and all claims by and between the Parties, and is not to be construed as an admission of liability, all liability being expressly denied by both Parties, or relief on the merits of any claims raised in the above-listed litigation or appeal.

The Parties stipulate and agree that neither Shadek/Harrison nor the County shall be construed or considered a "prevailing party" in any or all of the above-listed litigation or the appeal under any State or Federal law, including, but not limited to, 42 U.S.C. §1988, by the Settlement Agreement dated February 19, 2003, this Mutual General Release, the payment of consideration by the County, and/or the "Findings of Fact, Conclusions of Law, and Order," entered by the Sixteenth Judicial Circuit in and for Monroe County, Florida, (Case No. 95-20398-CA-05), dated July 17, 2001.

The County Administrator, on behalf of the Monroe County Board of County Commissioners, acknowledges that he has read, understood, and signed this Mutual General

Release after being duly advised by the County Attorney and authorized by the Monroe County Board of County Commissioners.

Shadek/Harrison, by their duly authorized representatives, acknowledge that they have read, understood, and signed this Mutual General Release of their own free will, agreeing to the terms set forth.

This Mutual General Release may be executed in multiple counterparts.

In witness whereof, the County and Shadek/Harrison have caused this Mutual General Release to be executed on the date(s) set forth below.

**MONROE COUNTY BOARD  
OF COUNTY COMMISSIONERS**

By \_\_\_\_\_  
James L. Roberts, County Administrator

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Danny L. Kolhage, County Clerk

Date: \_\_\_\_\_

Approved as to form

\_\_\_\_\_  
John Richard Collins, County Attorney

Date: \_\_\_\_\_

\_\_\_\_\_  
Katherine F. Shadek, in the  
capacities listed above

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Joseph R. Harrison, III, in the  
capacities listed above

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

CASE NO. 95-4947

ARTHUR J. SHADEK,  
KATHERINE F. SHADEK,  
and JOSEPH R. HARRISON, III,  
as Personal Representative of  
JOSEPH R. HARRISON, JR.,

Plaintiffs/Appellants,

v.

MONROE COUNTY BOARD OF COUNTY  
COMMISSIONERS,

Defendant/Appellee.

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**JOINT MOTION FOR  
DISMISSAL WITH PREJUDICE**

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**Appellants' and Appellee's Certificate of Interested Persons**

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure, Appellants and Appellee provide the following list of interested persons:

1. Catherine Harrison Balestra
2. Karen K. Cabanas
3. Robert H. Freilich
4. The Honorable Judge Luis Garcia
5. Douglas M. Halaey
6. James Harrison
7. Joseph R. Harrison, III



8. James T. Hendrick
  9. The Honorable Judge James Lawrence King
  10. T. Neal McAiley
  11. Commissioner Charles "Sonny" McCoy
  12. Hugh Morgan
  13. Mayor Pro Tem Murray Nelson
  14. Commissioner George Neugent
  15. Commissioner David P. Rice
  16. James L. Roberts, County Administrator
  17. Katherine F. Shadek
  18. E. Tyson Smith, Jr.
  19. Mayor Dixie Spehar
- 

**Joint Motion for Dismissal With Prejudice**

In accordance with Rule 42, Federal Rules of Appellate Procedure, Appellants and Appellee hereby jointly move to dismiss this appeal with prejudice. The parties have settled the controversy between them, including this and the related case styled Katherine F. Shadek, et al. v. Monroe County Board of County Commissioners, Case No. 95-20398-CA-05, in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida. Neither Appellants nor Appellee is to be considered or construed as a prevailing party in this case, under any State or Federal law, including, but not limited to, 42 U.S.C. § 1988, by the Settlement Agreement or Mutual General Release, both dated February 19, 2003, the payment of consideration by Appellee, the "Findings of Fact, Conclusions of Law, and Order," entered by the Sixteenth

Judicial Circuit in and for Monroe County, Florida, (Case No. 95-20398-CA-05), dated July 17, 2001, or the order requested by this motion.

Furthermore, Appellants and Appellee have agreed that each side shall be responsible for its respective fees, costs, and expenses (including, but not limited to, any and all costs, attorney's fees, or claims under 42 U.S.C. § 1983 and/or 42 U.S.C. § 1988). Appellants hereby expressly waive any claim to attorney's fees, expert fees, costs, or expenses under any and all state or federal laws, including, but not limited to, 42 U.S.C. § 1988, and therefore request the Court to enter an order granting this Motion for Voluntary Dismissal with Prejudice.

Respectfully submitted this \_\_\_\_ day of February, 2003.

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By: \_\_\_\_\_

IN THE CIRCUIT COURT OF THE  
SIXTEENTH JUDICIAL CIRCUIT  
IN AND FOR MONROE COUNTY,  
FLORIDA

GENERAL JURISDICTION  
DIVISION

CASE NO. 95-20398-CA-05

KATHERINE F. SHADEK; individually and  
on behalf of the Personal Representatives of  
ARTHUR J. SHADEK; and  
JOSEPH R. HARRISON, III as Trustee of the  
Testamentary Trusts of JOSEPH R. HARRISON, JR.,

Plaintiffs,

v.

MONROE COUNTY BOARD OF COUNTY  
COMMISSIONERS,

Defendant.

**ORDER DISMISSING CASE WITH PREJUDICE, VACATING ORDER, AND  
RETAINING JURISDICTION TO ENFORCE SETTLEMENT AGREEMENT**

THIS CAUSE having come before the Court on the Parties' "Notice of Settlement and Joint Motion for Dismissal With Prejudice, Vacation of Liability Order, and to Retain Jurisdiction to Enforce Settlement Agreement," and the Court having reviewed: (1) the Mediator's Report of January 8, 2003; (2) the Settlement Agreement and Mutual General Release entered into between the Parties dated February 19, 2003; and (3) the Resolution of the Monroe County Board of County Commissioners dated February 19, 2003 approving the Settlement Agreement and Mutual General Release, it is hereby:

ORDERED and ADJUDGED,

1. The above-styled action be and the same is hereby dismissed with prejudice, with each Party to bear it own attorney's fees, expenses, and court costs

(including but not limited to any expenses, fees and/or costs under 42 U.S.C. § 1983 and/or 42 U.S.C. § 1988);

2. The Court's Order of July 17, 2001 entitled "Findings of Fact, Conclusions of Law, and Order," be and the same is hereby voided, vacated, and set aside. It shall have no further precedential or preclusive force or effect (res judicata, collateral estoppel, or other preclusion) against the County, including any board, department, officer, or employee thereof, in this case or in any other judicial or administrative proceeding within the State of Florida.

3. The Court shall retain jurisdiction for the sole purpose of enforcing the terms of the Settlement Agreement, dated February 19, 2003, including the terms of payment, and for entry of such orders as may be necessary or reasonably required in the performance of the Settlement Agreement, in accordance with Rule 1.730(c) of the Florida Rules of Civil Procedure.

4. Neither the Plaintiffs nor the County shall be construed or considered a prevailing party in this litigation, under any State or Federal law, including, but not limited to, 42 U.S.C. § 1988, by the Settlement Agreement dated February 19, 2003, the Mutual General Release, dated February 19, 2003, the payment of consideration by the County, and/or the "Findings of Fact, Conclusions of Law, and Order," entered by the Sixteenth Judicial Circuit in and for Monroe County, Florida, (Case No. 95-20398-CA-05), dated July 17, 2001.

5. Any and all causes of action against the County regarding the subject properties, including any claims Plaintiffs may have against the County for attorney's

fees, expert fees, costs, and/or expenses, under any and all state and federal laws, including 42 U.S.C. § 1988, are hereby dismissed with prejudice.

6. The payments made by the County pursuant to the Settlement Agreement dated February 19, 2003 shall be made by wire transfer.

DONE AND ORDERED in Chambers at Plantation Key, Monroe County, Florida, this \_\_\_\_ day of February, 2003.

\_\_\_\_\_  
The Honorable Luis M. Garcia  
Circuit Court Judge

Copies furnished to:  
Robert H. Freilich  
E. Tyson Smith, Jr.  
Karen K. Cabanas  
Douglas M. Halsey